IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2118 OF 2007

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Mr.S.A.Dhamale for Appellant
Mr.J.J.Xavier for BMC.

CORAM : ANOOP V. MOHTA,J.

DATED : 27th August, 2007

P.C.

1. In view of the folowing paragraph, the appeal can be disposed of.

"Mrs. S. A. Dhamale, learned Advocate for the Plaintiff now submits that as the Plaintiff has removed the offending portion of the structure himself, as reflected in his reply dated 4.5.2006 to Corporation notice dated 12.4.2006 and also in the aforesaid Certificate issued by MMRAD to him, the remaining portion of the structure be protected by the Court, which holds no water as the Plaintiff's case being inherently weak, ad-interim reliefs sought by the Plaintiff to protect the suit structure were refused by the Court on 11.11.2005 by a reasoned order and the Plaintiff has not challenged this order in any superior Court till date. It is

pertinent to note that notice under section 314 of the MMC Act dated 7.6.2005 at Exh.M to the Plaint is silent about the dimensions of the offending structure. more importantly, though Plaintiff has sent his second reply dated 4.5.2006 to the Legal Department of the Defendants to their notice dated 12.4.2006 under section 354-Aof the MMC Act, the Plaintiff has not amended his plaint to that effect. There is considerable substance in the submissions of Miss R.N.Karia, learned Advocate for the Defendants that the Plaintiff having removed the offending portion covered by notice under Section 314 of the MMC Act, notice under Section 314 of the MMC Act has been complied with, and the present motion ought to be dismissed with reliefs claimed therein being now "non-est". At this stage, as the cause of action in the suit itself does not survive, Mrs.S.A.Dhamale, learned Advocate for Plaintiff now does not press the Suit. "

2. In view of the statement as recorded above of the impugned Judgment and order the suit itself was not pressed by the plaintiff, the present appeal against such order itself is therefore not maintainable. The first appeal is disposed off as not maintainable with liberty.

3. No Costs.

[ANOOP V. MOHTA, J.]